

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 271 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AMBICA MILLS LTD

Versus

COMMISSIONR OF INCOME TAX

Appearance:

MS HANSA B PUNANI for Petitioner

MR P.G. DESAI with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 13/04/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following three questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

By the Commissioner of Income Tax:

1. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the medical expenses, telephone expenses and accident insurance premium should not be disallowed under Section 40A(5) of the I.T Act, 1961?"
2. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that in respect of the machinery installed in its machinery division the assessee was entitled to development rebate at a higher rate?"

By the assessee:

3. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the guarantee commission paid to I.C.I.C.I was not allowable as revenue expenditure?"

The question No.1 is covered by our decision in the assessee's own case in ITR 88/83, in which we have held that the medical expenses and telephone expenses paid to the Managing Directors of the assessee company amount to benefit within the meaning of Section 40(c)(i) of the Act. These two items are therefore, required to be disallowed under Section 40(c) read with Section 40A(5) of the Act. The Tribunal was therefore in error in holding that the medical expenses and telephone expenses should not be disallowed and question No.1 in so far as it relates to these two items is answered in the negative against the assessee.

As regards the insurance premium, for the reasons already given in the assessee's own case (I.T.R No. 88/83), we hold that the Tribunal was right in allowing the entire expenses of insurance premium. Question No.1 in so far as it relates to insurance premium is answered in the affirmative against the Revenue.

The question No.2 which relates to the additional machinery installed in the Machinery Division of the assessee and which has been referred at the instance of the Revenue is also covered by our decision in ITR No. 88/83 decided on 3.4.1998 and for the same reasons as we had given there, we hold that the Tribunal was right in coming to the conclusion that the assessee was entitled to development rebate at higher rate in respect of

machinery installed in its Machinery Division. Question No.2 is therefore, answered in the affirmative against the Revenue.

Question No.3 which relates to the claim of the assessee in respect of guarantee commission, is also covered by our decision in ITR No. 88/83, in which following the decision of the Supreme Court in 227 ITR 464, it was held that such expenditure was a revenue expenditure. We therefore hold that the Tribunal committed an error in holding that the guarantee commission paid to ICICI by the assessee, was not allowable as revenue expenditure. Question No.3 referred at the instance of the assessee is accordingly answered in the negative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

*/Mohandas